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DOD/ISA:COL. SWETT (DRAFT)

S/S-O: R. ELTZ

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TO AMEMBASSY PANAMA IMMEDIATE

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EXDIS

E.O. 11652: GDS

TAGS: PFOR, PN

SUBJECT: PROPOSED THRESHOLD AGREEMENT ON JURISDICTION AND
USE RIGHTS

FOR BELL FROM WYROUGH

THE DEPARTMENT OF DEFENSE HAS CLEARED THE FOLLOWING THRESH-
OLD AGREEMENT ON JURISDICTION AND USE RIGHTS WHICH HAS BEEN
CONCURRED IN BY L/ARA AND THIS OFFICE.

WHEREAS THE PANAMA CANAL IS AN IMPORTANT INTEROCEANIC
WATERWAY LOCATED IN PANAMANIAN TERRITORY;

WHEREAS TERMINATION OF UNITED STATES JURISDICTION OVER THAT
PORTION OF PANAMANIAN TERRITORY NOW KNOWN AS THE CANAL ZONE
SHALL TAKE PLACE PROMPTLY UPON ENTRY INTO FORCE OF A NEW
TREATY;

WHEREAS BOTH PARTIES ARE COMMITTED TO DEVELOPING A NEW
PARTNERSHIP WHICH WILL PROVIDE FOR EFFICIENT OPERATION OF
THE WATERWAY;

WHEREAS PANAMA AND THE UNITED STATES HAVE IMPORTANT
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NATIONAL INTERESTS IN ASSURING THE PROTECTION AND

NEUTRALITY OF THE INTEROCEANIC WATERWAY;

WHEREAS IN FURTHERANCE OF THESE MUTUAL OBJECTIVES, PANAMA, AS TERRITORIAL SOVEREIGN, SHALL CONFER UPON THE UNITED STATES FOR THE TREATY'S LIFETIME THE USE RIGHTS -- INCLUDING THOSE RELATED TO LAND, WATER AND AIRSPACE -- NECESSARY FOR THE OPERATION, MAINTENANCE AND DEFENSE OF THE WATERWAY AND THE TRANSIT OF SHIPS;

IT IS AGREED THAT:

A. CRIMINAL JURISDICTION OVER PANAMANIAN AND THIRD COUNTRY NATIONALS (SEE FOOTNOTE ONE) WILL PASS TO PANAMA IMMEDIATELY UPON ENTRY INTO FORCE OF THE TREATY.

B. FOR 5 YEARS AFTER THE EXCHANGE OF RATIFICATIONS, THE UNITED STATES SHALL HAVE PRIMARY RIGHT TO EXERCISE JURISDICTION OVER ALL CRIMES COMMITTED -- WITHIN LOCALES MADE AVAILABLE TO THE UNITED STATES -- BY MEMBERS OF THE UNITED STATES ARMED FORCES, CIVILIAN UNITED STATES NATIONALS EMPLOYED BY THE UNITED STATES GOVERNMENT, AND THE DEPENDENTS OF MEMBERS OF THE UNITED STATES ARMED FORCES AND CIVILIAN UNITED STATES NATIONALS EMPLOYED BY THE UNITED STATES GOVERNMENT. THE STATUS OF FORCES AGREEMENT WILL GOVERN THE EXERCISE OF CRIMINAL JURISDICTION OVER SUCH PERSONS FOR CRIMES COMMITTED ELSEWHERE IN PANAMA. AFTER THE 5 YEAR PERIOD HAS EXPIRED, THE STATUS OF FORCES AGREEMENT WILL APPLY TO ALL CRIMES COMMITTED BY SUCH PERSONS IN PANAMA.

C. UNITED STATES CIVILIAN COURTS IN THE FORMER CANAL ZONE WILL BE DISCONTINUED 5 YEARS AFTER THE EXCHANGE OF RATIFICATIONS.

D. PANAMA SHALL ASSUME GENERAL POLICE AUTHORITY IN ALL OF THE FORMER CANAL ZONE (EXCEPT ON UNITED STATES INSTALLATIONS AND SUCH OTHER LIMITED AREAS AS MAY BE AGREED UPON) 5 YEARS AFTER THE EXCHANGE OF RATIFICATIONS; EXCEPT THAT IN AGREED-UPON AREAS, PANAMA SHALL ASSUME GENERAL POLICE AUTHORITY IMMEDIATELY UPON ENTRY INTO

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FORCE OF THE TREATY.

IN ORDER TO PREPARE IN AN ORDERLY FASHION FOR THE ASSUMPTION BY PANAMA OF GENERAL POLICE AUTHORITY, DURING THE TRANSITION PERIOD THERE SHALL BE A SYSTEM OF JOINT PATROLS (EXCEPT ON U.S. MILITARY INSTALLATIONS AND SUCH OTHER LIMITED AREAS AS MAY BE AGREED UPON) UNDER WHICH EACH MEMBER WILL HAVE ARREST POWERS OVER PERSONS

SUBJECT TO THE JURISDICTION OF HIS COUNTRY. AFTER THE

5 YEAR PERIOD, THE AUTHORITIES OF THE TWO GOVERNMENTS WILL CONTINUE TO COOPERATE AS PRESCRIBED BY THE SOFA, INCLUDING THE USE OF JOINT MILITARY POLICE PATROLS, WHERE APPROPRIATE. PANAMANIAN POLICE LIAISON PERSONNEL WILL BE LOCATED AT UNITED STATES MILITARY POLICE HEADQUARTERS.

E. THE UNITED STATES WILL DISESTABLISH ITS AGENCY KNOWN AS THE CANAL ZONE GOVERNMENT IMMEDIATELY UPON THE ENTRY INTO FORCE OF THE TREATY.

F. PRIVATE CIVIL CASES ARISING IN PANAMA WILL BECOME SUBJECT TO PANAMANIAN JURISDICTION IMMEDIATELY UPON THE ENTRY INTO FORCE OF THE TREATY.

G. BOTH PARTIES SHALL UNDERTAKE TO ENSURE THAT THE PANAMA CANAL REMAINS PERMANENTLY OPEN TO SHIPS OF ALL NATIONS ON A NON-DISCRIMINATORY BASIS AND AT REASONABLE TOLLS, AND THAT NO ACTION IS TAKEN THAT WOULD INTERFERE WITH THAT NEUTRALITY.

H. THERE SHALL BE NO "CANAL AREA."

I. THE UNITED STATES SHALL BE AFFORDED THE USE OF THOSE AREAS, INCLUDING RIGHTS TO FREE AND UNIMPEDED ACCESS TO AND MOVEMENT BETWEEN THEM, WHICH ARE NECESSARY FOR THE OPERATION, MAINTENANCE, DEFENSE, AND ORDINARY IMPROVEMENT OF THE CANAL, ITS BASIC SUPPORTING FACILITIES (INCLUDING HOUSING, SCHOOLS, HOSPITALS, AND UTILITIES), WATER SUPPLY AND THE ACTIVITIES LISTED IN PARAGRAPH O BELOW.

J. THE UNITED STATES SHALL HAVE THE RIGHTS SET FORTH
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IN THE STATUS OF FORCES AGREEMENT WITH RESPECT TO MILITARY ACTIVITIES, AND SHALL ALSO BE AFFORDED OPERATING RIGHTS WITH RESPECT TO THE ADMINISTRATION OF THE CANAL.

K. THE UNITED STATES GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES, AND THEIR EMPLOYEES, WILL BE AFFORDED IMMUNITY FROM PANAMANIAN CIVIL JURISDICTION WITH RESPECT TO ACTS OR OMISSIONS DONE IN THE PERFORMANCE OF OFFICIAL DUTY. EXCEPT FOR THIS IMMUNITY ALL CIVIL PRIVATE CASES ARISING IN PANAMA WILL BE SUBJECT TO THE PROVISIONS OF PARAGRAPH F. UNITED STATES GOVERNMENT RECORDS AND INSTALLATIONS SHALL BE INVIOABLE.

L. THE UNITED STATES SHALL HAVE EXCLUSIVE COMPETENCE OVER

SUCH MATTERS AS RELATIONS WITH ITS EMPLOYEES; THE SETTING AND MODIFICATION OF TOLLS; AND THE TRANSIT OF SHIPS THROUGH THE CANAL (INCLUDING VIOLATIONS OF NAVIGATION RULES). CLAIMS AGAINST THE UNITED STATES GOVERNMENT (OTHER THAN THOSE OVER WHICH THE UNITED STATES SHALL HAVE EXCLUSIVE COMPETENCE) SHALL BE SUBJECT TO A MUTUALLY AGREED CLAIMS PROCEDURE.

M. UPON ENTRY INTO FORCE OF THE TREATY, ALL UNITED STATES NATIONALS EMPLOYED BY THE CANAL ADMINISTRATION AND THEIR DEPENDENTS SHALL BE AFFORDED THE SAME PRIVILEGES AND IMMUNITIES AS MEMBERS OF THE CIVILIAN COMPONENT AND THEIR DEPENDENTS UNDER THE STATUS OF FORCES AGREEMENT. A LIMITED NUMBER OF SENIOR UNITED STATES OFFICIALS SHALL BE AFFORDED THE SAME PRIVILEGES AND IMMUNITIES AS DIPLOMATIC PERSONNEL.

N. IN ORDER TO PERMIT A TRANSITION TO THE NEW JURISDICTIONAL RELATIONSHIP WHICH IS NOT ONLY ORDERLY BUT ALSO EFFECTIVE, THE TREATY SHALL ENTER INTO FORCE 6 MONTHS AFTER THE EXCHANGE OF RATIFICATIONS.

IN NO INSTANCE SHALL THE PERIOD REQUIRED FOR TRANSITION OF THE JURISDICTIONAL ARRANGEMENTS HEREIN DESCRIBED EXCEED A TOTAL OF 5 YEARS FROM THE EXCHANGE OF RATIFICATIONS. (SEE FOOTNOTE TWO)

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O. THE FOLLOWING UNITED STATES ACTIVITIES SHALL BE AUTHORIZED BY PANAMA IN A SEPARATE AGREEMENT OR AGREEMENTS: TROPIC TESTING; JUNGLE WARFARE AND SURVIVAL TRAINING; COMMUNICATIONS; INTER-AMERICAN GEODETIC SURVEY OPERATIONS; SCHOOLING OF LATIN AMERICAN MILITARY PERSONNEL; HUMANITARIAN RELIEF OPERATIONS; SMITHSONIAN INSTITUTION RESEARCH ACTIVITIES; MEDICAL RESEARCH; FEDERAL AVIATION ADMINISTRATION OPERATIONS; AND ANY OTHER ACTIVITIES THAT MAY BE MUTUALLY AGREED UPON.

FOOTNOTE 1: OTHER THAN THOSE WHO ARE MEMBERS OR DEPENDENTS OF MEMBERS OF THE UNITED STATES ARMED FORCES.

FOOTNOTE 2: BOTH PARTIES RECOGNIZE THAT IN A FEW INSTANCES, AN ADDITIONAL, "GRACE" PERIOD OF NOT TO EXCEED 6 MONTHS FROM THE ENTRY INTO FORCE OF THE TREATY MAY BE NECESSARY IN ORDER TO PERMIT THE COMPLETION OF THE NECESSARY LEGISLATIVE AND ADMINISTRATIVE ARRANGEMENTS OF THE UNITED STATES AND PANAMA.

GENERAL WALLACE, ACTING CHAIRMAN, DOD PANAMA CANAL
NEGOTIATIONS WORKING GROUP, STATES IN A LETTER TO
AMBASSADOR BUNKER THAT THIS PROPOSED THRESHOLD AGREEMENT
ON JURISDICTION AND USE RIGHTS "REPRESENTS THE OFFICIAL
DEPARTMENT OF DEFENSE POSITION ON THIS MATTER." HE
FURTHER STATES, "YOU WILL NOTE THAT THE TRANSITION PERIOD
IN THIS DOCUMENT IS DESCRIBED AS BEING 5 YEARS IN LENGTH.
THE GOVERNOR OF THE CANAL ZONE, HOWEVER, HAS SUGGESTED A
TRANSITION PERIOD OF 3 YEARS. THEREFORE SHOULD SUCH A
COURSE OF ACTION BE DEEMED BY THE UNITED STATES NEGOTIA-
TORS TO BE IN THE BEST INTEREST OF THE UNITED STATES, THE
DEPARTMENT OF DEFENSE INTERPOSES NO OBJECTION TO
ADOPTION OF A TRANSITION PERIOD NOT SHORTER THAN 3 YEARS."
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